ground that the trust was to go into effect at once, the depositor holding the bank book as trustee. The New York case of *Martin* v. *Funk* (1878) 75 N. Y. 134, has in effect been overruled by the later case of *Sullivan* v. *Sullivan*, *supra*. See also *Noyes* v. *Savings Institution* (1895) 164 Mass. 583.

LIABILITY FOR THE ACTS OF AN INDEPENDENT CONTRACTOR.—The rule that an employer is not ordinarily liable for the negligence of an independent contractor is of comparatively modern origin. 1 Bevan, Negligence, 718. It had been held that a person is answerable for any injury which arises in carrying into execution that which he has employed another to do, *Bush* v. *Steinman* (1799) 1 Bos. & P. 404; but Chief Justice EYRE, in that case, expressed grave doubts and professed his inability to give any sound reason for the doctrine.

One of the first American cases to decide the question squarely was *Blake* v. *Ferris* (1851) 5 N. Y. 48. The defendants secured a license from the city of New York to construct a sewer in a public street, and let the contract for the work to one Gibbon. Through the latter's failure to guard the excavation properly at night, the plaintiff's horses and carriage fell into it and were injured. The court after a full discussion of the authorities held that the rule *respondeat superior* did not apply to a case of an independent contractor. A like result was reached in *Pack* v. *The Mayor* (1853) 8 N. Y. 222 and *Kelly* v. *The Mayor* (1854) 11 N. Y. 422, in each of which the plaintiff was injured by reason of the negligence of an independent contractor in blasting under a contract for grading a public street. The decisions in these cases are broad enough to include all injuries inflicted by an independent contractor. An important limitation was, however, introduced by the case of *Storrs* v. *City of Utica* (1858) 17 N. Y. 104. The facts were much the same as in *Blake* v. *Ferris*, *supra*, except that the sewer was being built under a contract with the city. The court held that the city owed to the public the duty of keeping its streets in a safe condition for travel and was therefore liable for the neglect to keep proper lights and guards around an excavation which it had caused to be made by an independent contractor. The reasoning and general doctrine of *Blake* v. *Ferris* were approved but their applicability to that state of facts seriously questioned. In that case, said COMSTOCK, J. (at p. 107), "there was no complaint of negligence in the actual performance of the work. The ditch was carefully and skillfully dug. There was no careless projection of rocks against horses or travelers. The plaintiff's horses were driven into the ditch because it was not guarded at night. The cause of the accident, therefore, was not in the manner in which the work was carried on by the laborers; if it had been, their immediate employer, and he only, was liable for the injury. But in a sense strictly logical, as it seems to me, the accident was the result of the work itself, however skillfully performed. A ditch cannot be dug in a public street and left open and unguarded at night without imminent danger of such casualties. If they do occur, who is the author of the mischief? Is it not he who causes the ditch to be dug, whether he does it with his own hands, employs laborers, or lets it out by contract?"

The principle of this case has been recently reaffirmed by the Court of Appeals after an exhaustive discussion of the New York cases. *Deming* v. *The Terminal Railway of Buffalo et al.* (Dec. 1901) 169 N. Y. 1. The defendant railway, acting under an order from the Supreme Court, had entrusted to a contractor the work of raising the grade of a highway so that it should pass over the defendant's tracks by means of an overhead bridge. The work was progressing strictly according to the plans and specifications, but, owing to the failure properly to guard at night the embankment where the road was being filled in, the plaintiff was injured. The railway sought to escape liability on the ground that the work was being done by an independent contractor, but the court held that it was under an absolute duty to keep the highway in a safe condition, and as the injury was the direct result of the work itself which necessarily endangered the highway, the defendant as well as the contractor was liable.

The distinction between injury naturally resulting from the work itself, in which case the employer equally with the contractor is liable, and injury due to the collateral negligence of the contractor or his agents, in which case the contractor alone is liable, is now generally recognized. 2 Dillon, Municipal Corporations, 4th ed. §§ 1027, 1030; *Gas Co.* v. *Myers* (1897) 168 Ill. 139, 146; *Dalton* v. *Angus* (H. L. 1881) L. R. 6 A. C. 740, 791, 829. The difficulty lies in applying the test to the particular state of facts. Where the plaintiff's horse was frightened by the sudden escape of steam from a steam drill at work in a public street a recovery against the employer was allowed, *Water Co.* v. *Ware* (1872) 16 Wall. 566; but not where the horse was frightened by blasting in a public street. *Herrington* v. *Village of Lansingburgh* (1885) 110 N. Y. 145. In *Fuller* v. *City of Grand Rapids* (1895) 105 Mich. 529, the contractor in paving the streets unnecessarily deposited earth upon an abutting lot and the city was held not liable. There the tortious act was clearly collateral to the undertaking and not such as should have been reasonably anticipated when the contract was entered into. In *City of Louisville* v. *Shanahan* (Ky. 1900) 56 S. W. 808, however, the contractor excavated an alley in exact accordance with the specifications furnished by the city, with resulting injury to the walls of the plaintiff's stable; and the city was liable because the injury was the proximate and necessary result of the work contracted for. *Bower* v. *Peate* (1876) L. R. 1 Q. B. D. 321, was a very similar case. The defendant employed a contractor to pull down his house, excavate for foundations and build another house, the contractor assuming the risk of supporting the plaintiff's house during the work and agreeing with the defendant to make good any damage suffered by the plaintiff. The plaintiff's house was injured and the defendant was held liable since the injury was the direct result of the work. This decision was approved by the House of Lords in *Dalton* v. *Angus*, *supra*. The ground of liability in

such cases is said to be that the resulting injury instead of being collateral and following from the negligent act of the employee alone, is one that might have been anticipated as a direct or probable consequence of the negligent performance of the work. *Bonaparte* v. *Wiseman* (1899) 89 Md. 12. It is, however, seriously questioned whether this broad proposition finds support in New York. In the *Deming* case, the language of COMSTOCK, J., in *Storrs* v. *Utica, supra,* to that effect, is indeed cited with apparent approval. But the recent cases of *Berg* v. *Parsons* (1898) 156 N. Y. 109 and *Uppington* v. *New York* (1901) 165 N. Y. 222 (see 1 COLUMBIA LAW REVIEW, 272) limit the decision in *Storrs* v. *Utica* to the narrow ground that it was the duty of the corporation to keep its streets in a safe condition for public travel, and for a failure to discharge that duty the corporation was liable. In *Berg* v. *Parsons* and in *Uppington* v. *New York* injury might have been anticipated as a direct or probable consequence of the negligent performance of the work. PARKER, C. J., towards the close of the opinion in the *Deming* case, intimates that it is placed on the same narrow ground of a statutory duty which could not be shifted. The railroad in the *Deming* case was proceeding under an order of the Supreme Court made in pursuance of statute. A condition of the order imposed upon it dominion over the highway and the resulting duty to keep the highway in a safe condition. A similar extension of the statutory duty to guard the public streets with resulting liability for the acts of independent contractors has been recognized in the case of street railways, *Woodman* v. *Metropolitan R'y Co.* (1889) 149 Mass. 335; of water companies, *Water Company* v. *Ware, supra;* and of gas companies, *Gas Co.* v. *Myers, supra.*

The duty of one who invites persons upon his premises, to see that they are reasonably safe, is another which cannot be avoided. So where one was struck by a large counter which a contractor was putting in position in the defendant's store, it was held that the defendant was liable. *Corrigan* v. *Elsinger et al.* (1900) 81 Minn. 42; and see *Curtis* v. *Kiley* (1891) 153 Mass. 123.